



# INSANE IN THE BRAIN: REBUTTING THE INSANITY DEFENSE

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# DISCLAIMERS & WARRANTIES

- Case study (no trial ☹)
  - Takeaways
    - Lean forward
    - Mental illness  $\neq$  insanity!
    - Behavior, behavior, behavior
  - Technical > Legal
-

# THE KEY INGREDIENT?



# ***STATE v. SCOTT CURLEY***





**Fredonia, AZ**



**Brian Harris murdered  
August 26<sup>th</sup>, 2010**

# STEP 1: STEALS ASSAULT RIFLE FOR “MISSION”



## STEP 2: ASSAULTS SCHOOL CUSTODIAN



## STEP 3: ENGAGES THE POLICE



# STEP 4: AMBUSHES/MURDERS BRIAN HARRIS



# STEP 5: ELUDES MANHUNT FOR DAYS



# IT STARTS AT THE BEGINNING: THE PROACTIVE POSTURE

- Dr. Pitt retained before Curley apprehended
- Advises re: police interview
- Interviews numerous witnesses
- Visits scene locations



**“BUT JUDGE, HE’S CRAZY!”**

**- EVERY DEFENSE LAWYER**

13-502. Insanity test; burden of proof; guilty except insane verdict

A. A person may be found guilty except insane if at the time of the commission of the criminal act the person was afflicted with a mental disease or defect of such severity that the person did not know the criminal act was wrong. A mental disease or defect constituting legal insanity is an affirmative defense. ....

C. The defendant shall prove the defendant's legal insanity by clear and convincing evidence.

**ANALYSIS BEGINS (NOT ENDS) W/ MENTAL ILLNESS!**

# CASES TO KEEP IN MIND

- *In Re NATALIE Z.*, 214 Ariz. 452 (App. 2007)
  - Mental illness not enough
  - Motive matters
- *CLARK v. ARIZONA*, 548 U.S. 735 (2006)
  - Observation vs. capacity
  - Angels, pins, & lots of dancing
- *STATE v. WRIGHT*, 214 Ariz. 540 (App. 2007)
  - It's all about behavior (aka, Dr. Pitt is right!)

# MOTIONS TO KEEP IN MIND

- Definition “wrongfulness” (*Tamplin*, 195 Ariz. 246)
- *In limine* re: *Mott* categories 2 & 3
- Limit experts (e.g., Dr. Potts’ “preliminary” opinion)

# THE FORENSIC INTERVIEW: THE VALUE OF VIDEO-RECORDING

- **Preserves the Integrity of the Interview**
    - **Captures non-verbal behavior**
    - **Subtlety and nuance**
    - **Minimal need for note-taking**
  - **Negates 3rd party presence**
  - **Work product held up to scrutiny**
-

# DR. PITT: THE FORENSIC INTERVIEW



# STATE'S EXPERT: THE REPORT



# DR. PITT'S REPORT: FOCUS ON BEHAVIOR

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Re: *State of Arizona v. Scott Curley*  
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*momentary, temporary conditions arising from the pressure of the circumstances, moral decadence, depravity or passion growing out of anger, jealousy, revenge, hatred or other motives in a person who did not suffer from a mental disease, or defect, or an abnormality that is manifested only by criminal conduct.*

At the time Scott Curley committed the instant offenses he had a mental disease or defect, namely Schizophrenia, Paranoid Type. Notwithstanding the presence of this mental illness, the defendant's behavior, in addition to the statements he made to representatives from the Coconino County Sheriff's Office and me, demonstrate that he appreciated the wrongfulness of his conduct. To wit:<sup>68</sup>

- a. On August 24 or 25, 2010, Scott Curley broke into Andrew Carman's residence to steal the assault rifle used to kill Deputy Harris. When entering the Carman residence, the defendant did so at a time when he knew no one was home and entered through a side window so that he would not be seen. (See Pages 16 and 66 - 68)
- b. Once inside the Carman residence, Scott Curley swept away the footprints that he made in the flour that was left on the floor. He did so in order to "cover" his "tracks." (See Pages 57, 58 and 66 - 67)
- c. After Scott Curley stole the assault rifle from the Carman residence, he hid it (first in his broken down truck and then in an abandoned house) so

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that his parents would not find out that he had it in his possession. (See Pages 18 and 71 - 74)

- d. By stealing the assault rifle from the Carman residence, Scott Curley knew that he could get arrested for "burglary, theft, and breaking in I think . . .". (See Pages 57 and 76 - 77)
- e. On August 25, 2010, after Scott Curley confronted Mike Waters, he left the school grounds because he knew that the police would be looking for him. (See Pages 81 - 82)
- f. Scott Curley knew that it was wrong to threaten Mike Waters. (See Page 81)
- g. While on the dike near the school and in an effort to learn how to use the stolen assault rifle, Scott Curley fired off some practice rounds. He shot into the ground because he was "not stupid enough to shoot into the air." (See Pages 20 - 21, 55 and 79 - 80)
- h. When Scott Curley saw more than one police officer near the dike, he "backed off to hide." (See Pages 21, 22 and 44 - 45)
- i. When Scott Curley returned to his residence and realized that his father was going to call the police, he left and spent the night in the desert because he knew that if he stayed, he would be arrested. (See Pages 22 - 23 and 84 - 85)

<sup>68</sup> This section includes multiple citations. These citations are not meant to be all-inclusive but instead represent a

# THE DEFENSE EXPERTS: REPORTS

## Report of Dr. Anna Scherzer: Questions to be addressed:

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### INDEPENDENT PSYCHIATRIC EVALUATION

**DATE:**  
12/24/11

**RE:** Scott Curley

**CASE NAME:**  
Arizona v. Curley

**CASE NUMBER:**  
CR2010-00709

**AGE:**  
24 years of age

**DOB:**  
7/1/87

**REFERRED BY:**  
Defense Counsel – Brad Bransky, Esq.

### **SUMMARY OF PSYCHIATRIC CONSULTATION QUESTIONS TO BE ADDRESSED:**

1. Did Scott Curley suffer from a mental illness or defect on or before August 2010?
2. If he did suffer from a mental illness or defect on or before August 2010, what was the nature of Scott Curley's mental illness or defect?
3. If Scott Curley did suffer from a mental illness on or before August 2010, how, if at all, did said mental illness or defect affect his cognition and/or behavior, specifically those associated with his current charges listed below?
4. Does Scott Curley currently suffer from a mental illness or defect?
5. If Scott Curley does currently suffer from mental illness or defect, what is the nature of said illness or defect?
6. If he does currently suffer from a mental illness or defect, what impact does said mental illness or defect on Scott's behaviors.
7. If Scott Curley does suffer from a mental illness or defect that affects cognition or behavior, what are the treatments, if any, for that mental illness or defect?
8. If Scott Curley does suffer from a mental illness or defect, what is the prognosis for the condition?

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## What about the real issue!?

# OTHER KEY ASPECTS OF THE REPORT

- **Materials Reviewed**
- **Informed Consent**
- **Selective reference to other experts**
- **Antisocial Personality Disorder**
- **The Briar Patch: History, Symptoms, Delusions**

# THE DEFENSE EXPERTS: INTERVIEWS

## 8. OPINIONS

- a. You conclude that Scott Curley's drug use made his mental illness worse, right? Report p 2, #2 Summary Responses
- b. You conclude that Scott Curley had narcissistic personality traits, correct?
  - i. Explain what that means?
- c. You conclude that Scott Curley had antisocial personality traits, correct?
  - i. Explain what that means?
- d. Are you familiar with how insanity is defined under Arizona law?
  - i. How is it defined?
  - ii. Would you agree that according to Arizona law, a person is not insane if, at the time they commit an offense, they are capable of telling right from wrong?
  - iii. That is true, even if the person has a mental illness, right?
- e. Everyone with mental illness is not legally insane at all times, correct?
- f. Everyone with delusions is not legally insane at all times, correct?
- g. Everyone with paranoid schizophrenia is not legally insane at all times, correct?

- Purpose
  - Discover
  - Confirm
  - Set up
- Outline

Effect of drug use

Illness v. Personality

Illness vs. Insanity!

# THE DEFENSE EXPERTS: INTERVIEWS

- a. Do you agree that you actually never asked Scott Curley if he knew what he was doing was wrong when he killed Bryan Harris?
  - i. Show us where in your interview you asked him that?
- b. You didn't ask Scott Curley why he entered Andrew Carman's residence when no one was home, correct?
  - i. Would it matter to you that he did that so he would not be seen?
- c. You didn't ask SC why entered AC's home through a side window so that he would not be seen?
  - i. Would it matter to you he did that so he would not be seen?
- d. Didn't ask SC why swept away footprints that he made in flour that was left on the floor?
  - i. Matter to you he did that so his footprints would not be found?
- e. Didn't ask why he hid the assault rifle when he went back to his home?
  - i. Matter to you he did that so his parents wouldn't find it
- f. After SC assaulted Mike Waters with the assault rifle, he left the school grounds because he knew the police would be looking for him, isn't that correct?
- g. You didn't ask SC if it was wrong to threaten MW with rifle?
  - i. Matter to you if SC has stated that he DID KNOW it was wrong to threaten MW w/ rifle?

- ***Did she ask Defendant?***

- **BEHAVIOR!**

- **Reasons for behavior**